

1 Randy H. McMurray, Esq. (SBN:126888)
2 Email: rmcmurray@law-mh.com
3 Yana G. Henriks, Esq. (SBN: 250638)
4 Email: yhenriks@law-mh.com
5 Lauren I. Freidenberg, Esq. (SBN: 312428)
6 Email: lfreidenberg@law-mh.com
7 **McMURRAY HENRIKS, LLP**
8 811 Wilshire Blvd., Suite 1640
9 Los Angeles, California 90017
10 Telephone: (323) 931-6200
11 Facsimile: (323) 931-9521

12 *Attorneys for Plaintiffs*

13 **UNITED STATES DISTRICT COURT**
14 **EASTERN DISTRICT OF CALIFORNIA**

15 MARIA ELENA GARCIA, an individual; ADRIEANA GARCIA, an individual; C.G., a minor by and through his *guardian ad litem* Maria Elena Garcia; S.G., a minor by and through her *guardian ad litem* Maria Elena Garcia; J.G., a minor by and through her *guardian ad litem* Maria Elena Garcia; and GLORIA GARCIA; an individual,

16 Plaintiffs,

17 v.

18 CITY OF FARMERSVILLE, a California municipal entity; TULARE COUNTY, a California municipal entity; CITY OF VISALIA, a California municipal entity; OFFICER EDUARDO CARRILLO, an individual; OFFICER DIEGO CORONA, an individual; OFFICER JEREME BROGAN, an individual; OFFICER PAULINO MANZANO, an individual; SERGEANT RALPH VASQUEZ, JR., an individual; LIEUTENANT JAY BROCK, an individual; SERGEANT CARDENAS, an individual; DEPUTY MATTHIAS HERNANDEZ, an individual; DEPUTY TAYLOR HOBSON, an individual; DEPUTY S. JAJOY, an individual; DEPUTY JASON KENNEDY, an individual; and DOES 1-100, inclusive,

19 Defendants.

20 **Case No.: 2:21-CV-00482-NONE-EPG**

21 **JOINT RULE 26(f) REPORT**

22 **SCEDULING CONFERENCE:**

23 **June 8, 2021**
24 **11:00 A.M.**
25 **Courtroom #10 (6th Floor)**

26 **U.S. Magistrate Judge Erica P. Grosjean**

27 **INTENT TO APPEAR**
28 **TELEPHONICALLY**

1 On May 19, 2021, Lauren Freidenberg, Esq., counsel for Plaintiffs Maria
 2 Elena Garcia, *et al.*, Daniel Cha, Esq., counsel for Defendant City of Farmersville,
 3 *et al.*, Leonard Herr, Esq. and Caren Curtiss, Esq., counsel for City of Visalia, and
 4 Amy Myers, Esq., counsel for defendant County of Tulare, *et al.*, conducted a Fed.
 5 R. Civ. P. 26(f) conference in this case.

6 All counsel intends to appear telephonically for the Scheduling Conference.
 7 The parties shall call the telephonic conference information as listed in this Court's
 8 Order Setting Mandatory Scheduling Conference (Dkt. No. 3 at p. 2).

9 The parties submit the following Joint Rule 26(f) Report:

10 **Summary of Proposed Dates**

| | Parties' Proposed Dates |
|--|--------------------------------|
| Last Date to Hear Motion to Amend Pleadings or Add Parties | September 27, 2021 |
| Fact-discovery cut-off | April 8, 2022 |
| Mid-Status Discovery Conference | January 8, 2022 |
| Initial Expert disclosures | May 16, 2022 |
| Rebuttal expert disclosures | June 13, 2022 |
| Expert discovery cutoff | July 15, 2022 |
| Last Day to File Dispositive Motions | August 26, 2022 |
| Final Pretrial conference | December 19, 2022 |
| Trial | February 20, 2023 |
| | Estimate: 10-14 days |

24 1. **Statement of the Case:**

25 **Plaintiff**

26 This is a civil suit brought under the Federal Civil Rights Act, 42 U.S.C. §
 27 1983 for violation of Plaintiff's rights as secured by the United States Constitution.
 28 This court has "Federal Question" subject matter jurisdiction over the parties and

1 claims pursuant to 28 U.S.C. §1343(3) and 28 U.S.C. §1331.

2 On or about June 24, 2020, Plaintiffs have alleged that Mr. Garcia died as a
3 result of inadequate medical care provided by law enforcement officers from the
4 City of Farmersville Police Department and deputies from Tulare County Sheriff's
5 Department.

6 Mr. Garcia was taken to Tulare County Adult Pre-Trial Facility ("TCAPF")
7 for booking instead being transported directly to a hospital via ambulance for
8 medical clearance despite exhibiting signs of intoxication and/or a serious medical
9 need. Defendant officers and/or defendant deputies knew or should have known
10 that Decedent necessitated immediate medical care prior to booking at TCAPF.
11 Defendant officer Carrillo failed to take Decedent immediately inside of TCAPF
12 for a medical screening and instead kept him inside of the patrol vehicle for almost
13 twenty (20) minutes prior to escorting Decedent inside TCAPF.

14 While in custody at TCAPF, defendants failed to properly monitor decedent
15 or place him in a medical observation/detox cell. Ultimately, Decedent was to be
16 transported to a hospital for medical clearance. Prior to departure from TCAPF,
17 defendant officer Carrillo threw Decedent to the ground while handcuffed. Instead
18 of transporting Decedent to the hospital via ambulance, he was transported via
19 patrol car.

20 Due to the unreasonable delay in medical treatment, Mr. Garcia died at
21 Kaweah Delta District Hospital after attempts to be revived by medical personnel.
22 Mr. Garcia was only 43 years old. He is survived by wife, children, and mother,
23 who bring suit herein in their individual capacities in addition to in their capacities
24 as successor-in-interest.

25 Plaintiffs are seeking both economic and non-economic damages, but has not
26 yet ascertained their damages. Plaintiffs also seek declaratory and/or injunctive
27 relief pertaining to their *Monell* claims, ADA and Rehabilitation Act Claim, and
28 Bane Act claim.

1 **Defendants**

2 City of Famersville Defendants

3 On June 24, 2020, Farmersville Police Department officers responded to
4 Decedent Manuel Garcia's residence regarding his being intoxicated and causing a
5 disturbance. Garcia was arrested for being under the influence without incident and
6 without the use of any use of force. Garcia was transported without incident to
7 TCAPF and walked into the facility. He was evaluated by medical staff, who drew
8 a blood sample for later testing. The medical staff at TCAPF then informed the
9 transporting Officer Carrillo that Garcia required a medical clearance from Kaweah
10 Delta Medical Center in order to accept him for booking.

11 Officer Carrillo escorted Garcia back to the patrol vehicle, and Garcia briefly
12 fell to the ground. He was not thrown to the ground. Eventually, with the assistance
13 of a deputy, Officer Carrillo placed Garcia in the back seat of the vehicle. Officer
14 Carrillo then drove to Kaweah Delta Medical Center. Upon arrival, Officer Carrillo
15 attempted to have Garcia exit the backseat, and then noticed Garcia was non-
16 responsive. He pulled Garcia out of the vehicle, ran to get medical personnel to
17 provide assistance, and retuned to start CPR before being relieved by medical
18 personnel. Garcia eventually passed away.

19 As it turns out, Garcia had ingested a bindle of methamphetamine that burst
20 in his stomach, which released a lethal amount of the drug into Garcia's system.
21 Toxicology of the blood sample obtained while Garcia was at TCAPF revealed a
22 methamphetamine level of 999 ng/mL (0.999 mg/L). Toxicology of post-mortem
23 blood sample revealed a methamphetamine level of 6 mg/L. Garcia died because
24 of a sudden massive overdose of methamphetamine, not because of any action or
25 omission of any Farmersville Defendant.

26 County of Tulare Defendants

27 On June 24, 2020, Mr. Garcia was taken into custody by Farmersville Police
28 Department (FPD) Officers and transported by FPD to the Tulare County Adult Pre-

1 Trial Facility (“TCAPF”) for booking. Mr. Garcia was escorted into the facility by
2 an FPD Officer. Once inside TCAPF, Mr. Garcia was escorted to intake for a
3 screening, which is performed on all inmates upon arrival at the jail *prior to*
4 *booking*, to ensure that the prisoner is medically fit to be booked into custody at the
5 facility (i.e., to ensure that existing, emergent and urgent health care, dental or
6 mental health issues are properly identified and addressed, and to obtain a medical
7 clearance when necessary). Custody and control of the prisoner is transferred to the
8 Sheriff’s Department only upon booking. Unless and until an inmate is accepted for
9 booking, he or she remains in the custody and control of the arresting officer.

10 Although escorted, Mr. Garcia did not require assistance walking into the
11 facility, or through the facility to intake for his screening. Once at intake, Wellpath
12 medical personnel conducted Mr. Garcia’s screening [Wellpath is contracted to
13 provide all medical screenings and services in Tulare County jail facilities]. At the
14 conclusion of Mr. Garcia’s screening, medical personnel refused Mr. Garcia for
15 booking, requiring the arresting officer to obtain further evaluation and medical
16 clearance at Kaweah Delta Hospital. Mr. Garcia was then escorted out of intake
17 and out of the jail facility by the FPD Officer. Again, although escorted, Mr. Garcia
18 did not require assistance walking as he exited the jail facility. According to interior
19 and exterior jail facility video surveillance, Mr. Garcia was escorted into TCAPF at
20 5:47 p.m., escorted to intake for his screening at 5:52 p.m., and escorted out of
21 TCAPF at 6:05 p.m., a total of eighteen (18) minutes.

22 City of Visalia Defendant

23 The City of Visalia had no involvement in any of the alleged conduct that is
24 the basis for imposition of liability against any other defendant. The incident in
25 question allegedly occurred in the City of Farmersville involving the Farmersville
26 Police Department, without the participation of any members of the Visalia Police
27 Department. Members of the Visalia Police Department did not participate in the
28 initial event(s), call(s) for service, initial investigation(s), nor provided

1 guidance/direction or was requested to provide assistance to the Farmersville Police
2 Department in any of the events that may or may not have led to the death of the
3 Plaintiffs' decedent.

4 After the events alleged in the complaint, the Farmersville Police Department
5 requested the Visalia Police Department to assist their agency, in conducting an
6 Administrative Investigation, which was conducted. It is a common practice among
7 law enforcement agencies to have unrelated agencies conduct investigations, where
8 there is an "in custody death." City disputes that it or any member of the Visalia
9 Police Department contributed to Plaintiffs' alleged damages.

10 **2. Summary of Disputed Facts and Contentions of Law:**

11 Plaintiff brings the following causes of action as set forth in the operative
12 Second Amended Complaint:

- 13 1. Denial of Medical Care (42 U.S.C. § 1983);
14 2. Excessive Force (42 U.S.C. § 1983);
15 3. Denial of Medical Care (*Monell*);
16 4. Failure to Train, Supervise, and Discipline (42 U.S.C. § 1983);
17 5. Municipal Liability - Ratification (*Monell*);
18 6. Wrongful Death (C.C.P. § 377.60);
19 7. Negligence;
20 8. Failure to Properly Investigate (42 U.S.C. § 1983);
21 9. Right of Association (42 U.S.C. § 1983);
22 10. California Civil Code § 52.1.
23 11. Violation of 42 U.S.C. §12101 et seq. (Americans with Disabilities Act);
24 12. Violation of 29 U.S.C. §794(a) (Rehabilitation Act)

25 The parties anticipate litigation and briefing regarding the substantive merits
26 of plaintiff's claims, the decedent's comparative fault, and any defendant deputy's
27 entitlement (or not) to qualified immunity. At this time, the parties do not anticipate
28 any unusual substantive, procedural, or evidentiary issues.

1 **3. Discovery Plan:**

2 The parties do not anticipate any unusual or extraordinary discovery issues
3 and do not seek any modification of discovery rules set forth in the Federal Rules
4 of Civil Procedure and Local Rules.

- 5 a. Exchange for Initial Disclosures: The parties are following the
6 deadlines set forth in Fed. R. Civ. P. 26(a)(1)(C)), e.g., June 2, 2021.
7 b. Non-Expert Discovery: April 8, 2022
8 c. Date for Mid-Status Discovery Conference: January 8, 2022
9 d. Expert Discovery:
10 i. Initial Disclosures: May 16, 2022
11 ii. Rebuttal: June 13, 2022
12 iii. Expert Discovery Deadline: July 15, 2022
13 e. Proposed Changes to Limited on Discovery Imposed by FRCP:
14 i. The parties do not anticipate any modifications to Fed. R. Civ. P.
15 26(b);
16 ii. Plaintiff reserves the right to seek leave of Court (should the parties
17 be unable to resolve this issue by way of stipulation) in anticipation
18 that the number of depositions will exceed ten (10) pursuant to Fed.
19 R. Civ. P. 30(a)(2)(A), given the fact that there are fourteen (14)
20 named defendants);
21 iii. The parties do not anticipate any modifications to Fed. R. Civ. P.
22 30(a)(2)(B), as this is not applicable at this time;
23 iv. The parties do not anticipate any modifications to Fed. R. Civ. P.
24 30(d),
25 v. The parties do not anticipate any modifications to Fed. R. Civ. P.
26 33(a),
27 vi. Plaintiff may seek leave of Court to file a Second Amended
28 Complaint that identifies Doe Defendants upon discovery of Does'

1 identities.

2 f. Confidential Information: Discovery in this action is likely to involve
3 production of confidential and private information for which special
4 protection from public disclosure and from use for any purpose other
5 than prosecuting this litigation may be warranted. As such, the parties
6 anticipate entering into a stipulated protective order.

7 g. Issues or Proposals Relating to the Timing, Sequencing, Phasing, or
8 Scheduling of Discovery: Other than subsection (e), *supra*, the parties
9 do not anticipate other issues or proposals governing the timing,
10 sequencing, phrasing, or scheduling of discovery.

11 h. Discovery Outside of the United States: N/A at this time.

12 i. Electronically Stored Information: The Parties do not contemplate any
13 issues regarding disclosure or discovery of any electronically stored
14 information as Plaintiff has timely served Preservation of Evidence
15 letters and/or defendants have been on notice of its duty to preserve
16 evidence in this matter that is reasonably calculated to lead to the
17 discovery of admissible evidence and is reasonably likely to be
18 requested during discovery. Counsel has fully investigated their
19 respective client's information management system and are
20 knowledgeable as to its operation, including how information is stored
21 and how it can be retrieved.

22 i. Preservation: The parties have agreed on steps the parties
23 will take to segregate and preserve computer-based
24 information in order to avoid accusations of spoliation. Any
25 audio and/or video evidence obtained as part of any
26 investigation into the death of Mr. Garcia shall be stored on
27
28

1 a USB/CD and/or other removable device in native format¹
2 in case any electronic equipment and/or “Cloud” devices
3 require modifications or “upgrades.” All parties have agreed
4 to undertake reasonable efforts to maintain and preserve all
5 relevant evidence maintained in the parties possession,
6 custody, and/or control. All physical documents shall be
7 maintained in original format and in electronic format. The
8 aforementioned scope of ESI pertains to the death of Mr.
9 Garcia and all documents related to the investigation
10 (criminal, administrative, civil, internal, etc.) into the death
11 of Mr. Garcia that gives rise to this litigation.

12 ii. Scope of email discovery: The parties have met and
13 conferred on the scope of discovery for e-mails and email
14 retention. The parties have not yet come to an agreement on
15 the proper scope of email discovery or retention, but have
16 been discussing, and will continue to discuss, the issue in a
17 good faith effort to reach a mutually agreeable resolution
18 without further intervention of the Court or Magistrate
19 Judge. The parties have come to an agreement that e-mails
20 and email retention shall include the names of the parties to
21 this action as it pertains to the death and/or investigation of
22 the death of Mr. Garcia, and communications related to the
23 investigation related to Mr. Garcia's death.

24 iii. Inadvertent Production of Privileged Information: The
25 parties met and conferred on procedures for inadvertent
26 production of privileged electronic materials. The

27
28

¹ i.e. No modifications and/or in original format as it was stored on server system.

1 “producing” party shall immediately notify all other parties
2 of inadvertent production, and the procedures set forth in
3 Fed. R. Civ. P. 26(b)(5)(B) shall be followed.

4 iv. Data Restoration: N/A at this time.

5 **4. Status of All Matters Presently Set Before the Court**

6 Currently, there are no motions on calendar.

7 **5. Dates Agreed Upon by All Parties:**

- 8 a. Filing of Dispositive Motions: August 26, 2022
9 b. Pre-Trial Conference: December 19, 2022
10 c. Trial Date: February 20, 2023

11 **6. Settlement**

12 Potential resolution of the case was discussed at the conference of the parties
13 held pursuant to Federal Rule of Civil Procedure 26(f), and informal discussions
14 will continue as the case progresses. The parties agree to engage the services of a
15 private mediator after further discovery.

16 7. Type of Trial: Jury Trial

17 8. Jury Trial Estimate: 10-14 court days.

18 9. Bifurcation of Trial, Shortening or Expediting Litigation: N/A at this
19 time.

20 ///

21 ///

22 ///

23 ///

1 **10. Related Matters:** None.²

2
3 DATED: June 1, 2021

Respectfully Submitted,

MCMURRAY HENRIKS, LLP

By: /s/ Lauren I. Freidenberg
Randy H. McMurray, Esq.
Yana G. Henriks, Esq.
Lauren I. Freidenberg, Esq.

Attorneys for Plaintiffs, MARIA ELENA GARCIA; ADRIEANA GARCIA; C.G., a minor by and through his *guardian ad litem* Maria Elena Garcia; S.G., a minor by and through her *guardian ad litem* Maria Elena Garcia; J.G., a minor by and through her *guardian ad litem* Maria Elena Garcia; and GLORIA GARCIA

12 DATED: June 1, 2021

FERGUSON, PRAET & SHERMAN
A Professional Corporation

13 By: /s/ Daniel S. Cha
Bruce D. Praet, Esq.
Daniel S. Cha, Esq.
14 Attorneys for City of Farmersville
15 Defendants

16 DATED: June 1, 2021

HERR PEDERSEN & BERGLUND LLP

17 By: /s/ Leonard C. Herr
Leonard C. Herr, Esq.
Caren Curtiss, Esq.
18 Attorneys for Defendant City of Visalia

19 DATED: June 1, 2021

TULARE COUNTY COUNSEL

20 By: /s/ Amy Myers
Amy Myers, Esq.
21 Attorneys for Defendants County of
22 Tulare, et al.

28

2 This matter was removed from the Superior Court of the State of California, County of Tulare, Case No. VCU285945.

1 **JOINT MOTION SIGNATURE CERTIFICATION**

2 Pursuant to Local Rule 131(e) of the United States District Court for the
3 Eastern District of California, I certify that the content of this document, and the
4 accompanying proposed order, is acceptable to named counsel above and that I have
5 obtained authorization from counsel to affix their electronic signature to this
6 document on June 1, 2021.

7

8 DATED: June 1, 2021

9 **MCMURRAY HENRIKS, LLP**

10 By: /s/ Lauren I. Freidenberg

11 Randy H. McMurray, Esq.

12 Yana G. Henriks, Esq.

13 Lauren I. Freidenberg, Esq.

14 Attorneys for Plaintiffs, MARIA
15 ELENA GARCIA; ADRIEANA
16 GARCIA; C.G., a minor by and through
17 his *guardian ad litem* Maria Elena
18 Garcia; S.G., a minor by and through her
19 *guardian ad litem* Maria Elena Garcia;
20 J.G., a minor by and through her
21 *guardian ad litem* Maria Elena Garcia;
22 and GLORIA GARCIA

23 McMURRAY HENRIKS, LLP
24 8111 WILSHIRE BOULEVARD, SUITE 1640
25 LOS ANGELES, CA 90017